

REMARKS

The present Office Action addresses and rejects claims 1, 5-13, and 15-18.

Claim Rejections under 35 U.S.C. § 103

Claims 1, 5-8, 10-13, and 15-18 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Japanese Patent No. 09028458A of Kokuni in view of U.S. Patent No. 3,718,145 of Chateau and U.S. Patent No. 2,043,230 of Boll et al. (“Boll”). Dependent claim 9 is rejected pursuant to 35 U.S.C. §103(a) as being unpatentable over Kokuni in view of Chateau and Boll and in further view of U.S. Patent No. 5,186,190 of Hirzel.

In the previous Office Action, the Examiner issued the same rejections, except U.S. Patent No. 6,540,756 of Vaughan was relied on instead of Boll. Applicants successfully overcame the rejection by showing that a person having ordinary skill in the art would not be motivated to modify Kokuni in view of Vaughan. Applicants further argued that Vaughan represents non-analogous prior art. Applicants submit that Boll is merely cumulative of Vaughan, and thus for the same reasons the pending claims distinguish over the cited references and represent allowable subject matter.

Claims 1, 5-8, 10-13, and 15-18

Independent claim 1 recites a template for applying simulated eyebrows to a person’s face having a vertical line extending from an upper edge to a cutout portion at a substantial midpoint of a sheet, and a horizontal line extending from a right eyebrow slot to a left eyebrow slot. The vertical and horizontal lines are adapted to facilitate alignment of the template with respect to a person’s face. Independent claim 18 similarly recites a template for applying simulated eyebrows to a person’s face having a horizontal line extending from a left eyebrow slot to a right eyebrow slot for aligning the template with a person’s eyes, and a vertical line extending from an upper edge to a cutout portion formed in a lower edge of the template for aligning the template on a person’s nose. The Examiner admits that Kokuni fails to show a vertical and a horizontal line adapted to facilitate alignment of a template. The Examiner thus relies on Chateau to disclose a fleur-de-lis cut-out positioned in a center of a template and Boll to disclose a tool with “a vertical line and a horizontal line defining a cross hair as a known way to align facial features.” (Office Action dated Mar. 6, 2007, pg. 3). The

Examiner argues that it would have been obvious to one skilled in the art to employ a marking in the center of the template of Kokuni in view of Chateau, and to use the cross hair lines as taught by Boll in order to facilitate in centering the lines. Applicants respectfully disagree.

Just like Vaughan, Boll does not use cross-hairs to align an object with facial features, and thus a person having ordinary skill in the art would not be motivated to modify Kokuni and Chateau in view of Boll. Boll teaches a tool with marks in the shape of cross hairs that allow an ophthalmologist to take detailed measurements of a person's face for the manufacture and fitting of eye glasses. The marks are not used for aligning an object with facial features, as suggested by the Examiner. Moreover, Kokuni and Chateau already teach a feature for aligning the face maks, namely the fleur-de-le. A person having ordinary skill in the art would not modify Kokuni and Chateau to include an alignment feature when Kokuni and Chateau already have one.

The Examiner has also overlooked the fact that Boll represents non-analogous art that cannot be relied on to formulate an obviousness rejection over the pending claims. In order to rely on a reference in analyzing the obviousness of the subject matter at issue, the reference must be analogous prior art. A reference is "analogous" if (1) the reference is within the field of the inventor's endeavor, and if it is not then (2) the reference must be reasonably pertinent to the particular problem with which the inventor was involved. Boll is not within the field of the inventor's endeavor, and it is not reasonably pertinent to the problem to be solved. As discussed above, Boll teaches a tool used to make various measurements with respect to the eyes and face of a person. The present invention, however, teaches a template for applying eyebrows to a person's face. The measurment tool of Boll is not within the field of facemasks or eyebrow templates. In addition, the tool of Boll is not reasonably pertinent to the problem to be solved by the present invention, namely horizontal and vertical alignment. Instead the tool is designed to solve the problem of taking detailed facial measurements.

For all of the reasons stated above, independent claims 1 and 18, as well as claims 5-8, 10-13, and 15-17 which depend from claim 1, distinguish over Chateau and Kokuni in view of Boll and represent allowable subject matter.

Claim 9

The Examiner also rejects dependent claim 9 as being obvious over Kokuni in view of Chateau and Boll and in further view of Hirzel. As explained above, independent claim 1 distinguishes over Kokuni, Chateau, and Boll, and Hirzel does not remedy their deficiencies. Hirzel is merely relied on to teach a connecting element having a hole formed adjacent right and left edges of a sheet. Accordingly, dependent claim 9 distinguishes over Kokuni, Chateau, and Boll in view of Hirzel at least because it depends from an allowable base claim.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant encourages the Examiner to telephone the undersigned upon receipt of this response to discuss any issues that may remain.

Respectfully submitted,

Date: June 6, 2006


Lisa Adams, Reg. No. 44,238
Attorney for Applicant(s)

NUTTER, MCCLENNEN & FISH, LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2604
Tel: (617)439-2550
Fax: (617)310-9550